

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1237

Introduced by Assembly Member ~~Garrick~~ Members *Garrick and Duvall*

February 27, 2009

~~An act to amend Section 44012 of the Health and Safety Code, relating to vehicle emissions. An act to add Section 11713.07 to the Vehicle Code, relating to vehicles.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1237, as amended, Garrick. ~~Air resources: vehicle emissions: smog checks. Vehicles: manufacturers and distributors.~~

(1) Existing law generally requires a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to, among other things, dishonor a warranty, rebate, or other incentive offered to the public or a dealer, as specified, or to unfairly discriminate in favor of a dealership owned or controlled, in whole or part, by a manufacturer or an entity that controls or is controlled by a manufacturer or distributor.

This bill would make it unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch, after written demand, to fail to repurchase a noncompliant new motorcycle, all-terrain vehicle, or item of related merchandise originally purchased by a franchisee from the manufacturer or from another franchisee. The bill would require that the repurchase price be the original dealer cost charged by the

manufacturer or distributor plus any charges made by the manufacturer or distributor for vehicle distribution or delivery and the cost of any dealer-installed original equipment. The bill would provide that these provisions would not apply to products originally delivered by the manufacturer or distributor to a dealer more than 24 months prior to the repurchase demand.

(2) Under existing law, a violation of the above provisions relating to occupational licensing and business regulations in the Vehicle Code is a misdemeanor.

Because the bill would create a new crime, it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law establishes a motor vehicle inspection and maintenance program (smog check), administered by the Department of Consumer Affairs, that provides for the inspection of all motor vehicles, except as specified, upon registration, biennially, upon transfer of ownership, and in certain other circumstances.~~

~~Existing law requires that tests at smog check stations require, for all vehicles that are not diesel-powered, loaded dynamometer testing in enhanced program areas, as defined, and 2-speed testing in all other program areas, as defined.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11713.07 is added to the Vehicle Code,
2 to read:

3 11713.07. (a) It is unlawful and a violation of this code for a
4 manufacturer, manufacturer branch, distributor, or distributor
5 branch licensed under this code, after written demand, to fail to
6 repurchase any noncompliant new motorcycle, all-terrain vehicle,
7 or item of related merchandise originally purchased by a

1 franchisee from the manufacturer or from another franchisee. The
2 repurchase price shall be the original dealer cost charged by the
3 manufacturer or distributor plus any charges made by the
4 manufacturer or distributor for vehicle distribution or delivery
5 and the cost of any dealer-installed original equipment accessories.

6 (b) For purposes of this section, a new motorcycle, all-terrain
7 vehicle, or item of related merchandise is noncompliant if all of
8 the following apply:

9 (1) A notice is issued by the manufacturer or distributor or
10 governmental agency having jurisdiction that the item fails to
11 comply with federal or state product safety requirements or that
12 its retail sale would otherwise be prohibited by law.

13 (2) The noncompliance was not the result of any damage,
14 modification, or other act or omission taking place after the
15 original shipment of the product by the manufacturer or distributor.

16 (3) The manufacturer or distributor has failed to provide at no
17 cost to the dealer a means of curing the noncompliance within a
18 reasonable time not to exceed 30 days after receipt of the notice
19 specified in paragraph (1).

20 (c) For purposes of this section, “related merchandise” means
21 parts and accessories for exclusive use with a motorcycle or
22 all-terrain vehicle subject to repurchase and all helmets, gloves,
23 and related motorcycle and all-terrain vehicle safety apparel.

24 (d) This section does not apply to products originally delivered
25 by the manufacturer or distributor to a dealer more than 24 months
26 prior to the repurchase demand.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

36 ~~SECTION 1. Section 44012 of the Health and Safety Code, as~~
37 ~~added by Section 5 of Chapter 739 of the Statutes of 2007, is~~
38 ~~amended to read:~~

39 ~~44012. (a) The test at the smog check stations shall be~~
40 ~~performed in accordance with procedures prescribed by the~~

1 department, pursuant to Section 44013, and shall require, at a
2 minimum, for all vehicles that are not diesel-powered, loaded mode
3 dynamometer testing in enhanced areas, and two-speed testing in
4 all other program areas. The department shall ensure all of the
5 following:

6 (1) ~~Emission control systems required by state and federal law~~
7 ~~are reducing excess emissions in accordance with the standards~~
8 ~~adopted pursuant to subdivisions (a) and (c) of Section 44013.~~

9 (2) ~~Motor vehicles are preconditioned to ensure representative~~
10 ~~and stabilized operation of the vehicle's emission control system.~~

11 (3) ~~For other than diesel-powered vehicles, the vehicle's exhaust~~
12 ~~emissions of hydrocarbons, carbon monoxide, carbon dioxide, and~~
13 ~~oxides of nitrogen in an idle mode or loaded mode are tested in~~
14 ~~accordance with procedures prescribed by the department. In~~
15 ~~determining how loaded mode and evaporative emissions testing~~
16 ~~shall be conducted, the department shall ensure that the emission~~
17 ~~reduction targets for the enhanced program are met.~~

18 (4) ~~For other than diesel-powered vehicles, the vehicle's fuel~~
19 ~~evaporative system and crankcase ventilation system are tested to~~
20 ~~reduce any nonexhaust sources of volatile organic compound~~
21 ~~emissions, in accordance with procedures prescribed by the~~
22 ~~department.~~

23 (5) ~~For diesel-powered vehicles, a visual inspection is made of~~
24 ~~emission control devices and the vehicle's exhaust emissions are~~
25 ~~tested in accordance with procedures prescribed by the department,~~
26 ~~that may include, but are not limited to, on-board diagnostic testing.~~
27 ~~The test may include testing of emissions of any or all of the~~
28 ~~pollutants specified in subdivision (c) and, upon the adoption of~~
29 ~~applicable standards, measurement of emissions of smoke or~~
30 ~~particulates, or both.~~

31 (6) ~~A visual or functional check is made of emission control~~
32 ~~devices specified by the department, including the catalytic~~
33 ~~converter in those instances in which the department determines~~
34 ~~it to be necessary to meet the findings of Section 44001. The visual~~
35 ~~or functional check shall be performed in accordance with~~
36 ~~procedures prescribed by the department.~~

37 (7) ~~A determination is made as to whether the motor vehicle~~
38 ~~complies with the emission standards for that vehicle's class and~~
39 ~~model-year as prescribed by the department.~~

1 ~~(b) The test procedures may authorize smog check stations to~~
2 ~~refuse the testing of a vehicle that would be unsafe to test, or that~~
3 ~~cannot physically be inspected, as specified by the department by~~
4 ~~regulation. The refusal to test a vehicle for those reasons shall not~~
5 ~~excuse or exempt the vehicle from compliance with all applicable~~
6 ~~requirements of this chapter.~~

7 ~~(c) This section shall become operative on January 1, 2010.~~

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